

2013 IL App (2d) 121345-U
No. 2-12-1345
Order filed December 16, 2013

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 09-DT-3007
)	
SUSAN M. McWILLIAMS,)	Honorable
)	Brian P. Hughes,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Jorgensen and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court did not abuse its discretion in denying defendant a mistrial for the State's violation of an order in limine, as the jury heard only a nonleading question and the court sustained defendant's objection and told the jury to disregard; (2) because the evidence of defendant's guilt was overwhelming, we rejected her claims under the first prong of the plain-error rule and the cumulative-error rule.

¶ 2 Defendant, Susan M. McWilliams, appeals her conviction of driving under the influence of alcohol (DUI) (625 ILCS 11-501(a)(2) (West 2008)). She contends that she was denied a fair trial when the State violated the trial court's ruling on a motion *in limine*. She further contends

that it was plain error for the State to ask questions about drugs and make various comments during closing argument. She also argues that we should reverse based on the cumulative errors. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged on November 7, 2009. Before trial, the court granted her motion *in limine* to prohibit any mention that she refused to submit to a portable breath test.

¶ 5 On July 26, 2011, a jury trial was held. The arresting officer, Tracey Goodyear, was the only witness to testify. Goodyear testified about her qualifications and training and testified that, on November 7, 2009, she was driving behind defendant and noticed that her vehicle was weaving within her traffic lane. As defendant continued to drive, she crossed the white lane line on two occasions. On the second occasion, she nearly caused an accident with the car traveling in the lane next to her. Goodyear activated her emergency lights and siren to stop defendant and announced the stop over the public address system. Defendant continued to drive for about 0.3 miles before pulling over.

¶ 6 As Goodyear approached defendant's car on foot, she had to slap the trunk and yell to defendant to stop because the car was rolling backward. When Goodyear looked inside of the car, she saw that it was a manual transmission in neutral and that defendant was trying to put on the parking brake. A video of the stop shows that Goodyear asked defendant to put the car into gear. Defendant did not acknowledge her presence, so she opened the car door and identified herself. Goodyear testified that defendant had bloodshot eyes, had slurred speech, and appeared to be a little dazed and confused. Goodyear noted an extremely strong smell of alcohol when she opened the door. Defendant had difficulty retrieving her driver's license. She removed items from her wallet and overlooked her license about six times. Goodyear twice pointed out to

defendant where it was. The video shows that it took a minute and 10 seconds for defendant to ultimately find the license and provide it to Goodyear. Goodyear asked defendant where she was coming from, and she responded “Lake Barrington.” Goodyear then asked where defendant was going, and she said “Lake Barrington.” Goodyear said that defendant had passed the most direct route to Lake Barrington.

¶ 7 Goodyear asked defendant to get out of the car and detected the odor of alcohol on defendant’s breath. The video shows that Goodyear asked defendant about the strong odor of alcohol she detected. Defendant denied having had anything to drink.

¶ 8 Defendant failed multiple field sobriety tests. Goodyear asked defendant, who was not squarely facing her, to turn around and face her. The video shows that defendant turned in a complete circle and still did not face Goodyear until given further direction to do so. Goodyear asked defendant to recite the alphabet, beginning with the letter F. Defendant failed the test by beginning with the letter A. She also gave several letters out of order. When asked to walk heel to toe for nine steps, defendant repeatedly failed to follow directions. When Goodyear first started to demonstrate the movement, defendant walked forward, turned around, and returned. When Goodyear again attempted to show defendant how to perform the test, defendant again walked forward and turned around, taking a large step sideways. Defendant then walked past Goodyear and back toward her car. Goodyear had to call her back to perform more tests.

¶ 9 Goodyear next asked defendant to raise one foot and hold it up while keeping her hands at her sides. Defendant repeatedly failed to follow instructions and, despite around six attempts, was unable to hold her leg up for more than one or two seconds. Goodyear testified that this was a sign of impairment. Defendant noted to Goodyear that it was windy, which the video confirms.

¶ 10 Goodyear agreed that defendant spoke clearly during the incident. However, the video shows that defendant appeared confused at times, was sometimes uncooperative, and had difficulty with all of the tests. The video shows that defendant was also mildly uncooperative during the arrest. After defendant was arrested, she refused to answer questions.

¶ 11 The State asked Goodyear if she asked defendant to take a portable breath test. Defense counsel's objection was sustained, and the court instructed the jury to disregard the question. (The jurors had also been told before trial that, if an objection were sustained, they were to disregard the question and not speculate about what the witness would have said. The jury was also instructed before deliberations not to consider any questions to which objections were sustained.) Defendant moved for a mistrial but noted that the jurors could probably figure out from *voir dire* questions that the results of a breath test were not going to be admitted during trial. The State argued that the mention was unintentional. The motion was denied.

¶ 12 The State asked Goodyear about her opinion that defendant was under the influence of alcohol and how [she knew] that this was alcohol-related and not drugs. Defense counsel objected without stating the grounds, and the objection was sustained. The State then asked Goodyear if she had any training in detecting driving under the influence of alcohol and drugs. Goodyear said that she did, and defense counsel objected. The court told the parties to approach the bench and told the State that it would not allow any inquiry about drugs. The State explained that its intent was not to insinuate that defendant used drugs, but to show that Goodyear believed that defendant was under the influence of alcohol instead of drugs, because defendant during *voir dire* had mentioned the possibility that some of defendant's actions could be explained by other causes. The court sustained the objection and said that, if other causes came out during

defendant's case, the State might be able to elicit that testimony in rebuttal. The court told the jury to disregard the question.

¶ 13 During closing, the State told the jury that defendant was unable to put her parking brake on and that she was unable to produce her driver's license, which required Goodyear to grab it. The State also argued that Goodyear was a highly qualified officer with over 20 years of experience, was trained extensively in DUI detection and enforcement, and had gone to classes every couple of years to refresh her wealth of knowledge. The State then noted Goodyear's opinion that defendant was under the influence of alcohol.

¶ 14 During defense counsel's closing, counsel argued that defendant's driving was attributable to the wind and that defendant's behavior was because she was being defiant, not because she was intoxicated. In doing so, defense counsel stated that defendant refused to open her car door. The State repeated this in its rebuttal, stating that defendant refused to open her door for Goodyear.

¶ 15 During rebuttal, the State also addressed the defense argument that defendant was acting in defiance, asserting that everybody, when stopped by the police, wants to be compliant and cordial so as to avoid a ticket. There were no objections to the State's comments during closing.

¶ 16 The jury found defendant guilty, and she was sentenced to probation and 30 days in jail. Defendant moved for a new trial, arguing in part that the court erred when it denied her motion for a mistrial. The motion was denied. Defendant appealed. We dismissed the appeal for lack of jurisdiction because of an outstanding motion to reconsider the sentence. *People v. McWilliams*, 2012 IL App (2d) 111019-U, ¶ 4. All outstanding motions were resolved on remand, and defendant appeals. We granted defendant's motion to establish jurisdiction, finding that the appeal was timely filed.

¶ 17

II. ANALYSIS

¶ 18

A. Violation of the Order *in Limine*

¶ 19 Defendant first contends that the court erred by denying her motion for a mistrial when the State violated the order *in limine*.

¶ 20 A trial court has broad discretion to determine the propriety of declaring a mistrial, and one should generally be declared only as the result of an occurrence at trial of such character and magnitude that the party seeking it is deprived of his or her right to a fair trial. *People v. Hall*, 194 Ill. 2d 305, 341 (2000). Likewise, the violation of an order *in limine* will constitute a ground for a mistrial only where the violation deprived the defendant of a fair trial. *Id.* at 342.

¶ 21 Because it is within the trial court's sound discretion to grant or deny a party's request for a mistrial, we will uphold the trial court's decision to deny a motion for a mistrial absent an abuse of discretion. *People v. Phillips*, 383 Ill. App. 3d 521, 547 (2008). An abuse of discretion exists only when the trial court's ruling is "arbitrary, fanciful or unreasonable or where no reasonable man would take the view adopted by the trial court [citations]." (Internal quotation marks omitted.) *People v. Santos*, 211 Ill. 2d 395, 401 (2004).

¶ 22 Generally, if a timely objection is made at trial to improper interrogation, the trial court can cure the error by sustaining the objection or instructing the jury to disregard the question and answer. *Hall*, 194 Ill. 2d at 342 (citing *People v. Carlson*, 79 Ill. 2d 564, 577 (1980)). In *Hall*, the court recognized that situations exist where improper questions are so damaging that a trial court cannot cure the prejudicial effect, but found that not to be the case there, where the witness gave a single nonprejudicial answer before the objection was sustained and the jury was told to disregard the question and answer. *Id.*

¶ 23 Here, the jury heard only the question, and the court told the jury to disregard it. Further, the jury was instructed on two other occasions to disregard questions to which objections had been sustained. Nothing about the question suggested the answer, and defense counsel noted that the jurors could probably figure out anyway from *voir dire* questions that the results of a breath test were not going to be admitted during trial. As was the case in *Hall*, the denial of the motion for a mistrial was not an abuse of discretion.

¶ 24 B. Plain Error

¶ 25 Defendant argues that plain error occurred in several respects. First, she argues that it was error when the State inquired how Goodyear knew that defendant was under the influence of alcohol instead of drugs. Next, she contends that the State misstated the evidence when it said that defendant (1) was so intoxicated that she could not put on her parking brake; (2) refused to open her car door; and (3) could not locate her driver's license and that Goodyear grabbed it from her. Finally, she contends that the State improperly bolstered Goodyear's credibility and that it improperly injected personal opinion into the closing when it told the jury that everyone who is stopped by the police wants to be compliant in order to avoid getting a ticket.

¶ 26 Defendant concedes that these issues were forfeited. To preserve the issues for appellate review, defendant needed to object at trial and raise the issues in a posttrial motion. See *People v. Herron*, 215 Ill. 2d 167, 175 (2005). However, defendant argues that we should reverse under the plain-error doctrine because the evidence was closely balanced.

¶ 27 A reviewing court may consider unpreserved error when either (1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence. *Id.* Under the first prong of the plain-error test, the defendant must show that the evidence was so closely balanced that the error alone threatened to tip the scales of justice

against the defendant, regardless of the seriousness of the error. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). Thus, the defendant must show that he or she suffered prejudice from the error. *People v. White*, 2011 IL 109689, ¶ 133. In determining whether the closely-balanced prong has been met, we must make a commonsense assessment of the evidence within the context of the circumstances of the case. *Id.* ¶ 139.

¶ 28 “As a matter of convention,” a court of review applying the plain-error rule first decides whether there was error at all. *People v. Rinehart*, 2012 IL 111719, ¶ 15. However, this convention is not mandatory. Our supreme court has urged judicial restraint and held that a defendant forfeits plain-error review where he or she fails to present an argument on how either of the two prongs of the plain-error doctrine is satisfied. *White*, 2011 IL 109689, ¶ 153. Further, the court in *White* noted that, where the only basis provided for plain-error review is a claim that the evidence was closely balanced, an assessment of the impact of an alleged error can be readily made after reading the record. When it is clear that the alleged error would not have affected the outcome of the case, a reviewing court need not engage in the “meaningless endeavor” of determining whether error occurred. *Id.* ¶ 148.

¶ 29 Here, defendant argues only that plain error occurred because the evidence was closely balanced. She does not argue the second prong of the plain-error test. We dispose of defendant's claims by holding that, even if error occurred, the evidence was not closely balanced.

¶ 30 Defendant claims that the evidence was closely balanced because there was strong evidence that her behavior was the result of defiance instead of intoxication. But, despite her assertions to the contrary, the evidence against defendant did not support that argument. Instead, it overwhelmingly showed her guilt. Defendant was seen weaving between the lane markers before she crossed the marker and nearly caused an accident. When stopped, defendant failed to

immediately put the car in gear or apply the parking brake. She was unable to locate her driver's license, even when it was pointed out to her twice, and she gave inconsistent answers to questions about where she came from and her intended destination. Goodyear detected the strong odor of alcohol on defendant's breath, even when she stepped out of her car into the wind. The video of the stop, which we have viewed and which was viewed by the jury, showed defendant behaving in a manner indicative of intoxication. It showed defendant trying to perform field sobriety tests multiple times and each time failing to follow instructions and failing the test. Any evidence of defiance was slight and appeared to be because of defendant's intoxication. Defendant's assertion that she was not intoxicated and was acting out of defiance is simply not supported by a commonsense assessment of the evidence.

¶ 31 After reviewing the trial testimony and videotaped evidence, we conclude that the evidence was not closely balanced such that any errors severely threatened to tip the scales of justice against defendant.

¶ 32 C. Cumulative Error

¶ 33 Without providing specific argument other than discussing plain error, defendant also argues that the alleged errors amounted to cumulative errors that denied her a fair trial. As with her plain-error argument, defendant relies solely on her contention that the evidence was closely balanced.

¶ 34 Cumulative error is applicable only where errors that are not individually considered sufficiently grave to entitle the defendant to a new trial cumulatively "create a pervasive pattern of unfair prejudice to defendant's case," in which case a new trial may be granted. *People v. Mendez*, 318 Ill. App. 3d 1145, 1154 (2001) (citing *People v. Blue*, 189 Ill. 2d 99, 139 (2000)).

¶ 35 Here, because of the overwhelming evidence against defendant, none of the alleged errors prejudiced her. Indeed, the errors defendant alleges, even if viewed as error, were *de minimis* and generally were cured by the jury instructions. “While individual trial errors may have the cumulative effect of denying a defendant [the right to a fair trial], no such accumulated error occurs where none of the separate claims amounts to reversible error.” *People v. Dresher*, 364 Ill. App. 3d 847, 863 (2006). Thus, because we have concluded that none of the challenged issues prejudiced defendant, the cumulative-error doctrine does not entitle her to a new trial. See *People v. Bradley*, 220 Ill. App. 3d 890, 904-05 (1991).

¶ 36

III. CONCLUSION

¶ 37 The trial court did not err when it denied defendant’s motion for a mistrial. Further, the evidence was not closely balanced. Thus, defendant was not entitled to a new trial under the plain-error doctrine, nor was she entitled to a new trial based on cumulative error. Accordingly, the judgment of the circuit court of Lake Country is affirmed.

¶ 38 Affirmed.